

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOSEPH SZTORC,

Plaintiff,

-vs-

05-CV-222C

PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant.

After the parties reached a settlement in this action, the court issued an order dated November 6, 2007, dismissing the action without costs and “without prejudice to the right, upon good cause shown within 60 days, to reopen the action if necessary” (Item 38). Thereafter, on January 4, 2008, plaintiff changed counsel and moved to reopen the case, arguing that he was not told by his former attorney that the settlement figure did not include payment of attorneys’ fees (Item 41). The matter was referred to the Hon. Jeremiah J. McCarthy, United States Magistrate Judge, for report and recommendation pursuant to 28 U.S.C. § 636(b)(1).

Upon review of the Report and Recommendation, the record in this case, and the materials submitted by the plaintiff in support of his motion, and no objections having been timely filed, it is hereby ordered that, pursuant to 28 U.S.C. § 636(b)(1), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72.3(a) of the Local Rules of Civil Procedure for the Western District of New York, and for the reasons set forth in Magistrate Judge McCarthy’s Report and Recommendation, plaintiff’s motion to reopen the case (Item 41) is denied.

So ordered.

_____\s\ John T. Curtin_____
JOHN T. CURTIN
United States District Judge

Dated: 2/23 , 2008
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